

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM 74-17

March 21, 1974

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Peter G. Nash, General Counsel

SUBJECT: Requests of U. S. Government Agencies to  
Inspect and/or Copy Material in NLRB  
Investigative Files

In response to requests for guidelines with respect to procedures to be followed by Regional Offices in circumstances where a Federal agency makes a request to inspect and/or copy materials in NLRB investigative files, this memorandum sets forth the appropriate procedures to be followed when such a request is made by a Federal agency. As you know, this matter was the subject of workshop discussion at our San Antonio Conference and a proposed draft of these guidelines was distributed to you for your consideration at that time.

My policy is to provide full cooperation and assistance to U. S. Government agencies where an appropriate request has been made. Accordingly, if an employee of a Federal agency requests permission to inspect an NLRB investigative file, such permission should be granted provided: (1) a written request has been made to the Regional Director by the head of the requesting employee's immediate organizational unit; and (2) the inspection is done at the Regional Office. With respect to the first requirement, the request must identify the employee who will inspect the file. In addition, the request should ordinarily identify the specific case file or files to be inspected. However, there may be circumstances where the request is, of necessity, a general one, e.g., all cases involving a particular labor organization or employer. Such a general request should nonetheless be honored provided, of course, that the employee of the requesting agency performs the work of going through the card catalog and identifying the files which he wishes to inspect. In addition, there may be emergency circumstances in which there is insufficient time for the requesting agency's organizational head to make a written request. In such cases, a telephonic request by a proper official of the requesting organization to the Regional Director will suffice. The Regions should maintain records concerning all such requests, whether oral or written, indicating the case name and number, the date of inspection, and the name of the inspecting person and his or her organization.

If an employee of a Federal agency desires a copy of material in the investigative file, a written request must be made by the head of the employee's immediate organizational unit to the NLRB General Counsel.

A copy of such request should be sent to the Regional Director of the Regional Office involved. Any such requests must describe with particularity the material to be copied, the relevance of such material to the requesting agency, and the precise manner in which the agency intends to use such materials. After consideration of the request, the General Counsel will inform the requesting agency as to whether permission to copy has been granted and, if so, whether there are any limitations as to the uses to which such copies may be put. Simultaneously, the General Counsel will advise the Regional Director of his decision and instruct him accordingly. As with requests to inspect, there may be emergency situations in which there is insufficient time for the requesting agency's organizational head to make a written request for a copy of material. There also may be occasions when a Federal Judge or grand jury requesting the material will refuse to comply with the requirements of seeking permission from the General Counsel. All such situations should be brought to the immediate attention of your Assistant General Counsel, including the necessary relevant information concerning the request. You will be advised promptly as to how to proceed in each such situation.

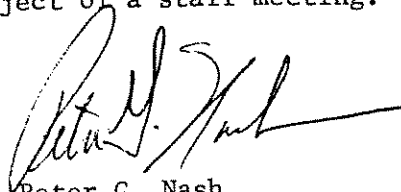
If the Federal agency is merely requesting a copy of a document in the public, or formal, file, it is not necessary that written request be made to the General Counsel. In such circumstances, the Regional Director can provide the documents and certify their authenticity if requested to do so. Of course, the request for the documents should be in writing.

In circumstances where materials are to be copied, such copying must be done at the Regional Office by an employee of the NLRB. Similarly, as with requests to inspect files, records should be maintained whenever a copy of material in the case file is furnished to another Federal agency. In addition to the information which should be recorded whenever files are inspected, the record should identify the specific material which has been copied. When a request is made for the original of the material and permission is granted by the General Counsel, the Region should make a copy of the document in question before it is delivered to the other agency. In addition, the return of the original should be required as soon as it has served the purpose of the requesting organization.

The foregoing instructions should cover most situations. There may be, however, unusual circumstances where the Regional Director believes that inspection of the file or compliance with a request for a copy of file materials would be an impediment to a current investigation or have an adverse effect on case handling. In such circumstances, where inspection is requested, the Regional Director should set forth his reasons for not recommending that inspection be permitted in a memorandum to Associate General Counsel DeSio and should not permit inspection unless authorized to do so by Mr. DeSio. If copying is requested, the Regional Director should also set forth his views concerning that aspect of the request.

In view of the above-stated policy to provide in appropriate circumstances other Federal agencies with materials, including affidavits from our investigative files, Board agents when interviewing witnesses should advise such witnesses of the possibility that their statements may be shown to another Federal agency upon a valid request for information. It should further be stressed to the witnesses, however, that such requests from other agencies are infrequent. The witnesses also should be told that their affidavits will remain confidential unless the witnesses are called to testify at a hearing and an appropriate request for such affidavit for the purposes of cross-examination is made upon the conclusion of direct testimony.

This memorandum should be made the subject of a staff meeting.



Peter G. Nash

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